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States and Corporations in Nineteenth Century America

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Market-Augmenting Government?
States and Corporations in Nineteenth Century America

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This paper was prepared for an IRIS conference on Market-augmenting government in March 1999. The paper germinated in a series of discussions I had with Mancur Olson in the weeks before is untimely passing in the winter of 1998. I would like to thank Chas Cadwell and Omar Azfar for giving me the opportunity and the spur to develop these ideas.

> The reader does not require to be told, that we have in our country an infinite number of corporations aggregate, which have no concern whatever with affairs of a municipal nature. These associations we not only find scattered throughout every cultivated part of the United States, but so engaged are they in all the varieties of useful pursuit, that we see them directing the concentration of mind and capital to the advancement of religion; to the diffusion of literature, science and the arts; to the prosecution of plans of internal communications and improvement; and to the encouragement and extension of the great interests of commerce, agriculture, and manufactures. There is a great difference in this respect between our own country, and the country from which we have derived a great portion of our laws. What is done in England by combination, unless it be the management of municipal concerns, is most generally done by a combination of individuals, established by mere articles of agreement. On the other hand, what is done here by the co-operation of several persons, is, in the greater number of instances, the result of consolidation effected by an express act or charter of incorporation.
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> Preface to *A Treatise on the Law of Private Corporations Aggregate*, Joseph K. Angell and Samuel Ames, 1831.

I. The Problem

By 1830, Americans were aware that their attitude towards business incorporation was something new in the world. They had departed from the model of the British and were seeking out new ways of combining individual effort, in both public and private forms, that would allow

their new society to expand and grow. By 1900, Americans had in place the outlines of the modern corporation that would dominate manufacturing and finance throughout the global economy in the 20th century. Over the last decade, Mancur Olson became interested in why governments might pursue policies that promote, rather than retard, economic growth. In a series of papers, he presented a framework in which a state's economic policies depended on its fiscal interest. Governments have a simple goal: maximize revenues. States will sometimes find it in their fiscal interest to augment market exchange, because the resulting economic growth increases the ruler's revenue. They are unconcerned whether they fulfill their goals by stealing, taxing, or providing market infrastructure. The results are as likely to be policies that retard growth as they are to promote growth. Market-augmenting government policies include defining and enforcing property rights, providing and supporting an efficient and fair judicial system, and regulating and supporting various forms of business organization.

The development of America policy towards corporations is a natural venue to understand how "market-augmenting government" evolves. The corporate form is one of the central institutions of modern economies and the American experience offers several advantages for the study of government creation and regulation of corporations. First, the American experience was not derivative. Hurst noted that "Both in the colonial years and after independence, corporation law was homemade product."[1] Americans were creating an institution out of whole cloth, not following an English example. Second, corporations were almost exclusively the creations of states. The First and Second Banks of the United States were the only corporations chartered by

[1] Hurst, 1. "In sum, when we began making important use of the corporation for business in the United States from about 1780, there was little relevant legal experience on which to draw. For 100 years, we proceeded to use the corporate instrument on a scale unmatched in England. In that development we built public policy toward the corporation almost wholly out of our own wants and concerns, shaped primarily by our own institutions. The one definite inheritance was the idea that some positive act of the sovereign was necessary to create corporate status. But we gave our own content to that idea." 8-9. See Maier, 1992 and

the federal government before the Civil War. The variety of government policies toward corporations provides an unusual opportunity to see widely different policy outcomes in an institutional environment that was fairly homogeneous.

This relative homogeneity was abetted by the Supreme Court?s decision in *Dartmouth College vs. Woodward*, when John Marshall wrote in his decision that ?A corporation is an artificial being, invisible, intangible, and existing only in its contemplation of law. Being the mere creatures of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence.?[2] By rendering the decision in this way, the Court insured that corporations would be treated as artificial *persons* at law, cloaking corporations in many of the constitutional protections provided to persons.[3] The homogeneity was an underlying principle, however, not an outcome. In 1839, in *Bank of Augusta v. Earle*, the Court placed a major limit on the constitutional protection available to corporations, when it delineated that while corporations were ?persons? they were not ?citizens.? Thus corporations did not enjoy a constitutional right to do business in a state other than the one in which it was chartered, nor was it entitled to all privileges and immunities of citizens in the several states.

If we want to understand when and why governments will pursue and support market augmenting policies, it is hard to imagine a better historical situation. The wide variety of outcomes from state to state produce a wealth of variation to explain. While we cannot test

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1993 as well.

[2] The Trustees of Dartmouth College v. Woodward, 4 Wheaton 518, 636 (U.S. 1819).

[3] ??Marshall?s Court ruled that the [New Hampshire] statute was invalid because it violated the clause in the federal Constitution, which forbids a state to pass any bill impairing the obligation of contract. To rule that corporate charter enjoyed the protection of a ?contract? under the constitutional provision was a clear-cut act of judicial lawmaking. Indeed, the lawmaking is so clear as to indicate that the Court was pursuing an objective, which it rated of high importance. The case did not involve a business corporation. But business corporations were playing a rapidly growing part in the economy, in great measure because their charters gave them operational utilities similar to those which Marshall?s opinion noted as making the college an effective, continuing organization. Contemporaries did not emphasize the decision as important for business corporations. But this was, in fact, its prime functional significance.? Hurst, 62-3.

directly whether some state policies were better than others at promoting income growth, we can observe directly the effect of policies on the number of corporations and, with some more difficulty, the capital of those corporations.[4] To the extent that we can measure the sophistication of a financial network by the density and specialization of financial intermediaries, we can directly observe the effect of state policies on market development. That brings us to two additional benefits of looking at American corporations and state governments.

This conference volume focuses on the role of market-augmenting government in capital and financial markets. Incorporated banks were the most important financial intermediary in the early 19th century, and the United States possessed a sophisticated financial system by 1830.[5] Although banks account for less than a quarter of the corporate charters issued in any state, charters for banks were typically the most valuable charters issued and, as a result, the most hotly contested.[6] The discussion of early 19th century chartering will focus almost exclusively on banks. The banking system was a critically important part of the financial markets in the individual states and throughout the country. Government regulation and incorporation of banks was the aspect of market-augmenting government with the most direct impact on capital markets.

Finally, corporations were enormously important to state finances, and, again, important in ways that varied widely between states. Revenues derived from specific corporate revenue sources, such as capital taxes and charter fees, were often twenty to fifty percent of state revenues. It easy to see and count corporations and it is easy to observe a state?s fiscal interest, since the

[4] The only state level income estimates for the 19th century are completely unsuited for a test of this type. Easterlin?s estimates of per capita income vary across states only because of differences in industrial structure of employment across states. As a result, we can?t use Easterlin?s numbers to test whether different corporate structures made banking or manufacturing more or less productive across states.

[5] Sylla, (1998).

[6] Bank charters typically ran a distant third to charters for public utilities, primarily in transportation, and for manufacturing. See Evans and others for counts of the types of business that received charters in the 19th century. I will return to this issue later in the paper.

financial returns from a state?s corporate policies show up in the financial records of state governments. States taxed corporations in a number of ways, each with a different implication for state revenues. States with revenue systems that shared in corporate profits, e.g., state ownership of stock, tended to limit the number of corporations and therefore increase the profitability of the few business that were chartered, and increase state revenues. States with revenue systems that taxed the number or size of corporations, e.g., a tax on capital stock, tended to maximize the number of corporations, foster more competition, lower aggregate profits, and increase state revenues. There is clear evidence that fiscal interest did shape the way in which states chartered corporations. Some states chartered more corporations, encouraged entry, and promoted competition because it was in their fiscal interest to do so.

Since the revenue structures of American states were fairly simple and corporate revenues were so important in a number of states, it is relatively easy to observe the relationships between fiscal interest and corporate policy. The next section presents a brief overview of corporate policy in the 19th century and identifies three periods and two transitions that we would like to be able to explain. The section that follows discusses some general ways in which fiscal interest may or may not lead state to pursue market-augmenting government policies. The rest of the paper looks more closely at state regulation of banking before 1860, the rise of general incorporation acts and free banking laws after 1840, the transition to national chartered banks during the Civil War, and the development of more general corporate forms by New Jersey and Delaware at the end of the century.

II. The History

The seed for this paper was Oscar and Mary Flug Handlin?s book *Commonwealth: A*

Study of the Role of government in the American Economy: Massachusetts, 1774 - 1861. The Handlins' book was one of a number commissioned and supported by the Committee on Research in Economic History to investigate the role of the government, particularly the importance of laissez faire policies, in promoting economic development in the early nineteenth century.[7] The Handlins quickly discovered that states did not follow laissez faire policies in Massachusetts or anywhere else. States everywhere deliberately and actively promoted economic development. Their book is about the role of association, organization, and incorporation in the economy of Massachusetts, and the role of government in promoting organizations, as well as restricting and shaping them. The Handlins, p. 106, found that the state's most important role was helping the economy organize itself:

> The public purpose which justified extension of government powers to a bank, to bridges, and to a factory soon comprehended a wide and ever widening circle of enterprises. The Commonwealth's concern with the entire productive system, its solicitude for the welfare of many diverse activities, all interdependent and all adding to the strength of Massachusetts, quickly put the corporate form to the use of many new ventures. The political balance defeated any notion of keeping the device exclusive; the expansive thinking, the excited spirits of the young state, brooked no casual denial. Charters in steadily mounting volume clothed with living tissues the skeletal hopes for an economy to serve the common interests.

One of the most consistent themes in Mancur Olson's scholarship is the role that self organized groups played in determining the workings of the economy. I was deeply intrigued by the notion that the primary contribution that the states had made to early economic development was organizational, as I most often think of the government's primary contribution in terms of internal improvement investment, improved financial markets, and property rights in general.

Massachusetts was something of an outlier in regard to corporations. Corporations were

[7] The CREH must rank among the most successful scholarly efforts of its type of all time. Books commissioned or supported include Hartz on Pennsylvania, Primm on Missouri, Benson on New York, and Goodrich on Canals. The ideas of the Committee are described in a memorandum prepared by Herbert Heaton and published as Appendix G of *Commonwealth* along with correspondence between the Handlins and the Committee. See Cole's remarks on the Committee's work in his review article in

not welcomed with open arms in all states, nor were all states willing to make the corporate form available to everyone. The intellectual heritage of the revolution contained two strong, but contradictory, ways of thinking about corporations. On the one hand, Americans believed strongly in the right to freely associate and to organize themselves voluntarily into groups to pursue common goals. The corporation was one of the ways in which people could organize, and in most states the earliest corporations were eleemosynary: charitable corporations like libraries, hospitals, schools, funeral societies, and fire companies.[8] The boundaries between charitable corporations, public service corporations, and business corporations were not clear, and public support for most types of incorporation was strong.

On the other hand, the revolutionary generation also left a legacy of suspicion of special interests, parties, and factions. A significant part of the colonial complaints against the English had, at their root, the claim that the King?s corrupt ministers represented the ?monied interest.?[9] This interest was composed of those politicians, bankers, merchants, and manufactures whose prosperity was so closely tied to the expanding British state.[10] The British themselves had questioned the wisdom of granting corporate status to the monied interests in the Bubble Act of 1719. The Act made incorporation more difficult, and in the process created the lack of British precedents that set the Americans down on their own corporate road after independence. When American states began operating as independent governments in the 1770s, among the first groups to approach them for corporate status included those same monied interests ? in the form of banks.

Americans began their republican experiment with an expansive and positive view of

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the Journal of Economic History.

[8] On the early history of corporations see Davis, 30-107, on charitable corporation in particular, 81-85.

[9] This literature is now extensive. The major works include Wood (1969 and 1992), Bailyn, and Pocock. Also see Banning, Maier (1972), and McCoy.

[10] Brewer?s book, *The Sinews of Power,* is a thorough treatment of the growth of the British military and the corresponding

association and incorporation, and they viewed their right to peaceable assembly as an inherent part of their rights as citizens. At the same time, they brought from their English and revolutionary tradition a hatred and suspicion of special interests, combinations, and conspiracies. Moreover, they had learned to fear the power of special monied interests to corrupt the independent legislative process, short circuiting the constitutional design of both the unwritten English constitution and the new, written state and national constitutions. At the very heart of the American form of political economy was a profound tension between the positive and negative potential of corporate forms of business organization. The corporation epitomized the dangers of well organized interest groups that American saw everywhere in the perils of party and faction. This tension would steadily increase, fueled by the constantly growing economic interests at stake, as well as the continuing political disagreement over the appropriate role of special interests and elites in what was becoming an increasingly democratic government.

It is not surprising then, that for the first sixty years of the nation?s history, states granted corporate charters on a case by case basis. With a few notable exceptions, 1774 to 1838 can be considered the period of incorporation by special charter. Each corporation was created by a deliberate act of a state legislature, and only two corporations were chartered by the national government, the First and Second Banks of the United States. Beginning in the late 1830s, general incorporation acts became popular. Under these acts, the most famous of which was New York?s Free Banking law, any group that met minimum standards, primarily for capitalization, could obtain a corporate charter administratively by applying to the appropriate state office or official. By the 1870s, incorporation under general acts had become the norm throughout the country. General incorporation acts, however, typically placed well defined limits on the capitalization,

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growth in the fiscal power and sophistication of the British state in the 18th century.

structure, and functions of corporations. States often had several general incorporation acts in force at any time. In New York, for example, there were over 20 general incorporation acts for banks, insurance companies, cemetery associations, manufacturing companies, railroads, etc.[11]

In the 1880s states, led by New Jersey and Delaware, began creating much more liberal general incorporation acts. Under these statutes, corporations were allowed to pursue almost any line of business they chose. Corporations were allowed to own stock in other corporations, including corporations charted in other states. Limits on capitalization were raised and eventually eliminated. Restrictions on the internal structure of corporations such as boards of directors, the voting rights of shareholders, the use of proxies, and the like, were eased or eliminated, and corporations were allowed to structure their own internal organization through corporation articles and by-laws. Incorporation acts continued to be liberalized into the 1930s.[12] The movement to liberal incorporation acts allowed business to become self organizing and removed the regulation of business activity from the chartering process.

> The movement of policy from the 1890's into the 1930's carried the utilitarian attitude [toward the corporations] about as far as it could go: if the law of corporate organization was legitimated by its utility to business enterprise, legitimacy would be most fully achieved if the law empowered businessmen to create whatever arrangements they found most serviceable... [the] regulation of business activity was no longer to be deemed a proper function of the law of corporate organization. The function of corporate law was to enable businessmen to act, not to police their action.[13]

The 1880s saw the end of corporate regulation by internal devices such as corporate charters, and after that date internal regulation was steadily replaced by external regulation of corporate actions by states and the national government.

This three period division is based on Hurst, but its outlines are so clear in the historical

[11] Seavoy.
[12] See Dodd, (1936).
[13] Hurst, 70.

record that this periodization is found in almost every history of corporate policy. There are, however, a variety of exceptions, indeed exceptions are more the rule. Since this essay will focus on the transition from special charters to general incorporation acts, and from general acts to liberal general acts, a more explicit treatment of the exceptions is in order.

States varied in the rate at which corporations were created. Table 1 presents information on average annual incorporations per decade from 1800 to 1839, for New York, Ohio, Maryland, Pennsylvania, New Jersey, and Maine. These were relatively developed states (with the exception of Maine) and showed active levels of incorporation in every decade. The three most common types of business incorporations (in descending order of importance) were public utilities engaged in transportation (bridges, turnpikes, roads, canals, and, at the end, railroads), manufacturing concerns, and banks. While numbers varied considerably from year to year, in no state did incorporations for either banks or manufacturing concerns compromise more than one-quarter of the total incorporations, and public utilities account for more than half.[14]

Most of these corporations were created by special acts of state legislatures, but how special were these special charters? Hurst argues, in detail, that despite their unique passage, special charters quickly fell into standardized patterns, p. 29:

> Typical ? and at first appearance contrary to the idea of standardization ? was the growth in the amount of detail put into special charters by mid-century. The combined evidence of hundreds upon hundreds of special charters with the elaboration of provisions on organization and powers written into these charters might be read as showing that the moving impulse was to tailor each charter to the particular desires of particular promoters. But closer reading shows relatively little variety spawned by all of this print. The bulk of the content of special charters tends to fall quickly into stock patterns. The practical impulse behind the continued increase in number and detail of special charters seems to have been mainly the wish to avoid certain features of the optional general incorporation

[14] The large number of public utility incorporations is important. These charters were for ? special action franchises? to create a corporation to carry out a specific function. This type of charter rarely came under general incorporation acts, even later in the century, since the typically granted special privileges, like eminent domain, to the corporation. These charters could not be standardized.

> acts, which were becoming more common by mid-century -- tight limits on capitalization, for example, and requirements that certain facts about the firm?s operations be made a matter of public record. But whatever it was that they did not like about the available general incorporation acts, promoters and their lawyers did not strive for much variety in the internal organization of the companies.

Hurst was undoubtedly right for ?hundreds and hundreds? of special charters that fit standard forms.[15] But here is what Cadman has to say about New Jersey, pp. 17-18:

> Whatever the reasons for New Jersey?s failure to adopt general regulating statutes during the pre-1845 years, the absence of such laws had considerable significance. When a group approached the legislature for a charter of incorporation, there was no general legislation to hamper them in pressing for any special privileges they desired. The road was open to secure a charter with as few or as many provisions and with as liberal terms as they had influence or tactical ability to obtain; there were no statutory obstacles to getting favors that would put the petitioning group at an advantage with respect to competitors or even with respect to the general public. In the absence of general regulating statutes, particular groups could obtain special assistance from a legislature that would have been unwilling to go so far as to change a general statute for their benefit... The wide variety of privileges and restriction appearing in business corporation charters granted by New Jersey bear testimony to the results of treating each charter as a separate and independent grant without the salutary influence of statutes of general applicability.

The differences between Cadman and Hurst are extremely relevant to the argument that follows. Special acts of incorporation that confer special privileges on well organized special interest groups are such prominent manifestations of phenomenon that Mancur Olson was interested in, that it would be nice to get a feel for how important truly special acts of incorporation were.

Unfortunately, there is no organized data that allows us to address the question. There were, however, numerous instances of very special charters being granted: charters for monopoly state banks in Indiana and Missouri; the New Jersey charter to the Camden and Amboy railroad that, in its amended form, guaranteed the railroad a monopoly of through traffic between New York

[15] This might, in part, be because Hurst is citing Dodd?s book on Massachusetts at this point, and Dodd clearly gives the impression that special charters rapidly became standardized. Dodd, (1954), 195-271: ?..The charters of all of them were much like that of the Nantucket Bank, a few contained clauses varying from the norm...? p. 204; ?The first of these, that of the Merchants bank, contained a number of new features which thereafter became usual.? p. 207; ?most of the banks chartered between 1811 and the enactment of the Banking Act of 1829 incorporated by reference to a large part of the act chartering the

and Pennsylvania (more on this later); and charter renewal for five banks in Baltimore that guaranteed that the state would charter no more banks in the city as long as the banks built a road to Hagerstown. Instances like these are quite common in the historical record. There is little reason to doubt that the drive for general incorporation acts in and after the 1830s, which was politically motivated as a way to eliminated special privilege, was fueled by reaction to truly special charters. All charters for railroads, turnpikes, and bridge that included the right of eminent domain included a special privilege that could not be generalized. Special charters must have conveyed some privileges. In New Jersey between 1845 and 1875 it was possible to obtain a charter through a general act or through a special act. Of the 2,049 corporations chartered in those years, only 494, or 20 percent, used the general incorporation procedure.[16]

It would be inappropriate to assume that most special charters were simply standardized duplicates of one another without careful examination of a state?s chartering practice.[17] Undoubtedly many states did move toward standardized patterns even in the period of special chartering, and some states used patterns almost from the beginning. But the possibility of granting a truly special charter existed as long as there were no prohibition against special charters.

This raises the corollary question: how general were general incorporation acts? We must remember that there were many types of corporations other than business corporations, and within the category of business corporations there were many types of charters. Seavoy identifies five stages in the development of corporate law. First, all corporations are granted special charters. In

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State Bank.? 209.

[16] Cadman, 206-8.

[17] In this regard, we should note Cadman?s caution about interpreting what appear to be standardized charters, p. 18: ?The beneficial effect if standardization clauses in special charters has often been stressed in discussions of the history of incorporation. It is true that in New Jersey many clauses came to be more or less standardized, but the use of stereotyped phraseology did little to correct the abuses suggested above. A standard clause could be altered slightly to change the effect in some important particular or, more important, omitted entirely in certain cases. Again it should be stressed that it was relatively easy to convince a legislature to make certain deviations from a norm in a special case when there was no general statute to set a pattern. Before

the second stage, a general incorporation statute is passed for benevolent organizations: schools, churches, funeral societies, etc. In the third stage a general regulatory statute is passed, governing the shape of corporate charters for particular purposes, but the legislature still incorporates individual businesses by special act within the framework of the general regulation. This was the model followed by Massachusetts, discussed later. The fourth stage was a general incorporation act for a specific type of business, which created an administrative mechanism for issuing charters to all applicants who met the stated qualifications, and stipulated specifically what the terms of the charter would be. This was the type of act that became more widely adopted in a number of states around and after 1840, although the first instances were earlier. A stage four-and-a-half, not identified by Seavoy, occurred when states created constitutional requirements that all corporation be created under general incorporation acts and specifically prohibited incorporation by special act.[18] The fifth stage was reached when a liberal, general incorporation code was created that extended the corporate form to a wide variety functions and did not place limits of the activities, internal structure, or capitalization of individual corporations.[19] This type of act was not adopted until the 1880s and 1890s.

General incorporation acts usually applied to specific business functions, not to incorporations in general. New York created a general incorporation act for manufacturing firms in 1811, but not for banks until 1838. By 1855, New York had created general incorporation acts for roughly twenty types of business activity.[20] But until the constitutional revisions of 1846, New

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1845, the only New Jersey charters that showed almost no important variations were those of turnpike companies.**?**

[18] The first of these was included in the Louisiana constitution of 1845, see Evans, 11, Table 5, for a list of adoption dates throughout the country.

[19] This discussion is in Seavoy, 5-8.

[20] A list of the acts can be found in Seavoy, Appendix 2, 283-5. The **?** roughly**?** in the text occurs because the state was continually adjusting its laws, and regrouping types of business activity under different acts. For a discussion of the 1811 general act for manufacturing, see Seavoy, 68-70.

York firms could still obtain a charter through special act and many did.[21] Massachusetts established a series of general regulatory acts that governed the structure of charters (for banks in 1829), but continued to issue charters individually through the legislature. Massachusetts effectively guaranteed to charter any corporation that met the terms of the regulatory statutes, long before it had general incorporation acts that provided for an administrative mechanism (what Massachusetts would call in several cases ?self-incorporation.?)[22]

So the answer to both questions ? how special was special? how general was general? ? is that it depends. It depends on the particular state and time under consideration. Hurst?s periodization still holds, however. Until 1838, when New York passed its Free Banking Act, every state was effectively a special charter state. This was even true for manufacturing in New York, since the General Act of 1811 did not preclude an interested group from obtaining a special charter. Some states had very special chartering, like New Jersey, where each charter was unique and special privileges and accommodations were the norm. Other states, like Massachusetts, had essentially standardized charters by adopting a general regulatory statute or issuing standardize charters in practice.

The transition to general incorporation acts was accomplished in two stages. First, incorporation in a standard form through an administrative mechanism became possible. At this stage groups could chose to obtain a charter through a special act or by administrative arrangement. Second, incorporation by special charter was prohibited. Strict general incorporation was accomplished by constitutional amendment or revision. Most, but not all states, had constitutional restrictions in place by 1880. In 1780, most state constitutions did not mention

[21] See Kessler, (1940), 877, 879 and the discussion in Dodd, 417-8. The numbers reported in Evans, 17, suggest that roughly 60 percent of charters for manufacturing firms were issued under the General Act, the remainder as special acts.

[22] For a catalog of Massachusetts Acts see Dodd, 475-479. Dodd includes a similar list on legislative acts for every state in New

corporations at all, and the few that did placed little or no restriction on the legislatures ability to create them at will.

The movement toward liberal general incorporation laws after 1880 is easier to document, because it developed in essentially two states, New Jersey and Delaware, and spread to other states through interjurisdictional competition. The next section outlines some general issues to be considered.

III. Some Theory

Throughout most of his academic career, Mancur Olson was steadfast and clear about whether government augmented markets: they didn't. The logic of the *Logic of Collective Action* and the extension of the argument in the *Rise and Decline of Nations,* left little or no room for positive action on the part of government.[23] It was only in the absence of government redistributive policies that economies would grow. The inexorable tendency was for redistributive coalitions to accumulate, accrete additional layers of government programs to redistribute income and wealth, and ultimately to slow growth. Only in the last decade had Mancur come to seriously ponder the question of how and why governments might act to promote the development of markets and economies.

The intellectual context for Mancur's work is neo-classical economic theory, in which economies automatically allocate resources to the highest valued use and economies grow until they exhaust profitable investment of capital or investment in new technologies.[24] What economic history clearly required, however, was something completely different. It required a model of

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England and a few others states.

[23] In this regard, the *Rise and Decline of Nations* could have been titled *The Decline of Nations* without doing an injustice to the argument.

[24] This simple, but realistic, view of neo-classical theory, is laid out in the opening chapters of North, (1981).

economic development in which economies usually didn?t grow, and when they did grow were unable to sustain growth over long periods of time. The level of population and the level of income in, say, 1700, was not consistent with sustained rates of growth in per capita income for any substantial period of time.[25] At the same time growth had to be possible, but generally reversible. In other words, economies occasionally rose, but always (until recently) declined. Mancur Olson wanted to explain to neo-classical economists was why economies failed to grow, and the explanation needed to be consistent with individual rationality and other neo-classical assumptions. Long run technical change (generally irreversible) was not a good candidate for the driving force in this theory. A good theory would also be capable of explaining the sustained growth of industrial economies since the 18th century. Even with their ups and downs, they have been remarkably vigorous in their growth. Of all the possible ways that one could explain both the positive and negative episodes in a long run history, only government ? the state ? seems to be a likely candidate.

Although Mancur came to theorize about the positive role that government might play in economic growth rather late, he brought a characteristic vocabulary to the task.[26] Beginning with a predatory state that would rob from its constituents whenever profitable and had only its own wealth and utility in mind, Mancur postulated two kinds of bandit states: roving and stationary. Roving bandits took what they could get in the short run, regardless of the long run consequences for their victims. Stationary bandits were settled, and their thieving had to be more systematic. Destroying property today reduced the economy?s potential in the future. Indiscriminate robbery

[25] Had per capita output grown at a rate of .1 percent per year, it would have been 2.7 times higher in 1700 than it had been in 700, and 7.4 times higher than it had been in 300 B.C. Somewhere in that hypothetical range the population would have starved or frozen.

[26] This discussion is taken from Olson, (1993). See the discussion in McGuire?s paper in this volume as well as McGuire and Olson, (1996).

weakened property rights and therefore the incentive to produce in the present, and to invest in the future. The farsighted ruler would be willing to sacrifice revenue today for more revenue in the future.

To determine exactly how much the ruler would be willing to invest in the economic well being of the general populace, Mancur brought in an old friend, the concept of encompassing interest.[27] Rulers that taxed all of their citizens had an interest in increasing the income of all of their citizens since it increased their tax haul, and the rulers incentive to promote growth was increasing in the tax rate. Rulers that taxed only a portion of their subjects or a portion of economic activity, because some subject were powerful or some activities were difficult to measure and/or tax, would have a less encompassing interest in promoting higher incomes. The willingness of rulers to pursue market-augmenting government policies would depend, ceteris paribus, on the extent to which their economic interests were encompassing. Potentially, this model would allow for rising and declining economies as the degree of the government?s encompassing fiscal interest rose or fell. Ultimately, political democracies would create governments with larger encompassing interests (even if their governments were still predatory). The growth of modern nation states with a modicum of representation, then republican governments, and finally fully democratic systems of government moved progressively toward economic policies that enhance everyone?s income and thus government revenues. These economies, of course, could still not avoid the problem that redistributive coalitions and groups posed for creating destructive rent seeking policies, but the growth enhancing effects of the government?s fiscal interests on balance outweighed the growth retarding effects of the

[27] A labor union that employed a third of the workers in an economy would have much greater stake, i.e. a more encompassing interest, in the overall level of income than a labor union with one percent of the workers in an economy. Ceteris paribus, the larger union would be less likely, at the margin, to pursue redistributive policies that reduced overall income, because their

government?s fiscal interests. Essentially, as long as the government finds that it can get more revenues from supporting market augmenting institutions than it can from creating special privileges, there is a dynamic, driving force to counterbalance the creeping institutional sclerosis caused by a build-up of redistributional coalitions.

While the vocabulary and conceptual apparatus of the stationary bandit is pure Mancur Olson, the logic is pure Douglass North. In chapter 5 of *Structure and Change in Economic History*, North lays out exactly the same logic, although presented in a slightly different manner. North places more emphasis on the effect that transaction cost have on the rulers ability to tax different groups, and therefore the idea that it can be in the rulers interest to confer a monopoly or a tax farm on a group or an individual in return for a low cost source of revenue. North also emphasizes the importance of competing rulers, either actual external competitors or potential internal ones, on the ability of the ruler to extract rents.

Both Olson and North, build a theory of state behavior around the fiscal interest of the state. The theory is ?neo-classical? in the sense states have a well defined objective function, maximize the present value of their net revenue stream, and really don?t care whether they achieve their goal by promoting secure private property rights or through brigandage. The theory has three attractive features:

First, the theory is indeterminate with respect to growth. The institutions that emerge from a state maximizing its fiscal interests are never, *a priori*, good or bad for growth. Indeed, the same state may simultaneously promote growth by creating better property rights in one sector of the economy while it retards growth by creating the wrong incentives for investment in another sector.

Second, while North nor Olson provide limited empirical and historical study, the notion

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members would bear a much larger share of the loss. Olson (1982), 49-50.

of fiscal interest is quite easy to operationalize. Fiscal interests can be readily identified by careful study of government budgets and tax policies. ?Thick description? is necessary make explanations plausible, but it is feasible. While the theory does not make predictions about the growth enhancing/retarding affect of state policies, it does make predictions about fiscal structures and policy outcomes. We should be able to predict some government policies simply by paying close attention to revenue structures.

Third, fiscal interest can readily be incorporated into a more general, if less well defined, model of state behavior. For example, we may be interested in what determines the number of businesses and the degree of competition in an industry. Directly observing the interests of potential competitors, as well as existing businesses, is extremely difficult. But we may be able to determine the fiscal interest that the government has in allowing entry, and indirectly we may get a handle on the value of entry by examining the entry fee charged by the government and the number of businesses willing to enter.

The ideas that I will use in the remainder of the paper are very simple and can be explained verbally, but it may help to translate them into a formal model. The basic policy we wish to explain is the degree of entry allowed by the state, specifically how many charters they issue. Suppose that one state taxes the output or an input of the chartered firms, a second state owns stock in a chartered firm, and a third state sells charters. The states derive revenues from the existence of the chartered companies, and pick the number of firms to maximize their revenues.

The state that taxes inputs or outputs has an incentive to maximize output. Output, Q, is a function of the number of firms allowed in the industry, N, and the tax rate, t:

(1) $Q = f(t,N)$ where $f^t < 0$, $f^N > 0$, and $f^{NN} < 0$.

So revenues, V, are:

(2) $V = t*f(t,N)$

The first order conditions are

(3) $dV/dt = f(t,N) + tf^t = 0$

and

(4) $dV/dN = tf^N = 0$

Equation (3) is straightforward, raise the tax as long as the increase in revenues on units that are produced is greater than the loss in total tax revenue of the units lost because of the tax increase. Equation (4) is of primary interest, because it implies that for any given tax rate, the optimal number of firms is as many as will enter, i.e. allow entry until $f^N = O$. A state that taxes output, or the corollary case where a state taxes an input, should follow a chartering policy that allows free entry into the industry.[28]

On the opposite end, suppose that the state owns a firm outright. Now the objective function is:

(5) $V = PQ - C(Q)$ Where $P = d(Q)$

If this is a competitive firm ($d^Q = 0$) the firm is a price taker. Profits, however, will be maximized when the firm is a monopolist and:

(6) $dV/dQ = d(Q) - d^QQ - C^Q = 0$

or

(7) $d(Q) - d^QQ = C^Q$

In other words profits are maximized when marginal revenue equals marginal costs. The firm has no revenue incentives to allow entry, since entry will reduce profits.

[28] It may not be in the state**?**s interest to allow unlimited entry if the new entrant actually reduces output, as might be the case in a

An intermediate cases can be described where there is limited entry. The state charges an entry fee to obtain a charter. This is more complicated, since the entry decision has to be explicitly modeled. In general, the amount that a firm is willing to pay to enter will be positively related to the firm?s profitability, and negatively related to the number of firms allowed in. The number of firms allowed to enter at the revenue maximizing entry fee will usually be more than one and less than the competitive market would support. A limiting case occurs with one firm, where the entry fee exhausts the firm?s profits, and we are back in the extreme examples that North and Olson use.

Table 2 shows how fiscal structure is related to regulatory policy. Along the left of the table are three types of fiscal regimes: monopoly, entry fees, or an input/output tax. Along the top of the table are the three regulatory policies on entry associated with the fiscal regimes: no entry, limited entry, and free entry. There is nothing in the model to suggest which fiscal regime a state will pick. Fiscal structure, tax rates, and entry are all endogenous. It remains to show how fiscal interest helps us understand whether and how early American governments augmented the development of financial markets by encouraging or discouraging the chartering of corporations.

IV. Taxation and Regulation of Banks Before 1860

The discussion of early 19th century chartering practice will focus on banks. Banks were the heart of early 19th century financial markets. They provided the medium exchange through their note issue, dominated the money markets and short term financial markets, and their equity issues, along with government debt and insurance companies, formed the basis for the growing stock market. Richard Sylla (1998) has made a persuasive case that the United States had a world class

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fishery with over fishing.

financial system by the 1830s. In 1830 the capital of American banks was roughly double the capital of English banks, the markets efficiently priced federal and state bond issues, and banks, insurance companies, and state governments were able to raise large amounts of capital fairly easily.[29] If we want to understand how governments may have augmented financial markets in the early 19th century, banks are the place to start.

Sylla (1985) has also shown that government policy toward corporations was largely shaped by the experience that state governments had with banks. There is no doubt that bank charters were the most valuable charters created by state governments, and the only charters created by the national government. In 1830, there were 330 state chartered banks with an average nominal capital of $333,642, not including the Second Bank of the United States with a capital of $35,000,000.[30] There were 71 banks with a capital of $500,000 or greater. The largest manufacturing firms in 1830 were textile firms in the northeast. Only a few of these firms were capitalized at more than $100,000. It was in banking, not in manufacturing, that states would look to promote their fiscal interests. The money simply wasn?t in manufacturing, even as late as 1830.

State regulation of the banking system, primarily controls on entry, were critically dependent on the fiscal interest of the state.[31] There was a wide variety in state banking systems throughout the country. Northeastern states were more commercially developed and had more banks and more bank capital, while banks in the south and west were fewer in number, although many had large capitals. The cross-state variation in the number of banks or the amount of bank

[29] That American Banks had more capital than English banks does not imply that the American banking system was larger or more sophisticated than the English. Many English banks were partnerships, and the partners had an incentive to minimize the amount of their capital formally involved in the business, while most American banks were corporations whose charter required a substantial amount of paid in capital for the bank to operate.

[30] Gilbart, 47.

[31] This section is based on Wallis, Sylla, Legler. In that paper we analyze the relationship between fiscal interest and bank regulation throughout the country.

capital is dominated by the level of economic development. In order to compare like with like, I will focus on Massachusetts, New York, and Pennsylvania, all large commercially developed states with a major financial center (an similar analysis of southern and western states can be found in Wallis, Sylla and Legler). Sylla?s estimates of bank capital in Boston, New York, and Philadelphia in 1830 suggest that these three cities alone had 40 percent of the total bank capital in England. All three markets were highly developed, but state promotion of banking had produced significantly different outcomes in each.

Table 3 presents information on the share of banks, bank capital, and population for the nation as a whole and for the total of the three states (e.g., Massachusetts share in the combined population of Massachusetts, New York, and Pennsylvania) in 1820, 1830, 1850, and 1860. Massachusetts clearly had the largest banking system relative to its population in each of the four years. New York had shares of banks and bank capital that fell below its population shares in 1820 and 1830, but New York?s bank and bank capital shares had reached parity with its population share by 1850 and 1860. Pennsylvania was always a laggard in the number of banks and the size of its bank capital, despite being the largest city and the nation?s capital from 1790 to 1800.

All three states shared the same banking policies in the 1790s and 1800s. A small number of banks were chartered in each state. These banks were regarded as public utilities, whose purpose was to provide a circulating medium and provide loans for government and commerce. The states often reserved the right to take a share in the stock of the banks that they chartered, and all three states received regular dividends on their stock. It was not until the first decades of the 19th century that their banking policies began to diverge.

Pennsylvania chartered the Bank of North America (BNA) in 1781. The Bank successfully resisted an attempt to charter a second bank in 1784, the Bank of Pennsylvania, largely by promising the state that it would broaden its shareholder base and allow the promoters of the Bank of Pennsylvania to purchase stock in the BNA. After the creation of the national Bank of the United States in 1791, based in Philadelphia, there was attempt to charter a second Bank of Pennsylvania in 1794. This time the new bank was successful in out bidding the BNA for a new charter. The BNA had offered the state the opportunity to buy BNA stock at a preferential price, but the Bank of Pennsylvania offered the state a better deal in its own shares. The scenario was repeated again in 1803 when the Bank of Philadelphia applied for a charter, again opposed by the existing banks. The state, mindful of its existing investment in the Bank of Pennsylvania, was leery of chartering a new bank and reducing the value of its stock and dividends, but the new bank offered substantial inducements. After a long negotiation, a charter was issued to the Bank of Philadelphia for which the bank paid the state $135,000 in cash; the state had the right to subscribe to $300,000 in stock by tendering U.S. bonds, which would be returned to the state should the bank fail; additional rights to purchase stock in the future; and the bank incurred the obligation to loan the government up to $100,000 at 5 per cent for a period not exceeding ten years.[32] Another bank was chartered in 1809, again in the face of opposition by existing banks and in return for a substantial charter fee. Schwartz concluded, p. 15:

> The offer of monetary inducements for the granting of a charter, which began as a voluntary solicitation of the legislature [by the bank promoters], came to be looked upon as a necessary accomplishment of a petition for incorporation. The committee reported that since the petitioners sought a charter for profit-making purposes, the state had a right to require a payment for the privileges it conferred.

For the next four decades Pennsylvania would continue to sell bank charters, collect dividends,

[32] The discussion of Pennsylvania banking is based on Schwartz, 6-15.

and restrict the numbers of bank in order to protect its fees and dividends. Table 4, taken from Wallis, Sylla, and Legler, reports revenues from bank sources as a share of total state revenues. Pennsylvania received roughly 20 per cent of state revenues from bank dividends and charter fees well into the 1840s.

Massachusetts began in much the same way, chartering a relatively small number of banks, owning stock in a number of them, and closely identifying the fiscal interest of the state with the banks. In 1812, however, most of the existing bank charters came up for renewal. The state expanded its holdings in the banking system by chartering the Bank of Massachusetts, with a capital of $3 million of which the state subscribed a third. The state already had substantial bank holdings, the Handlins report a total of $1.8 million in 1812. In 1812, the state also imposed an annual, one per cent tax on bank capital.[33] Unlike Pennsylvania, where banks paid large charter fees, political competition in Massachusetts had resulted in more liberal chartering at lower fees, over the strenuous opposition of the existing banks. When revenues from the tax on bank capital began flowing into the Treasury, the state began to see that its fiscal interest lay in increasing the number of banks. By 1820 the state had liquidated all of its bank stock and was liberally providing charters. In 1829 ? a general act was passed prescribing the powers and duties and internal organization of all banks that might thereafter be incorporated and also of those existing banks whose charters should be extended or capital increased.?[34] This was a general regulatory statute. Chartering still required a special act of the legislature, but the structure of charters was set and the state essentially incorporated all the banks who applied and met the requirements. As table 4 shows, from the 1830s onward, the bank tax was the single most important source of revenue in the state, in most years providing more than half of total state revenues (figures before

[33] Handlin and Handlin, 120. The discussion of Massachusetts is based on Handlin and Handlin, 113-121 and Dodd, 201-218.

1830 are unavailable).

From similar starting points, banking in Pennsylvania and Massachusetts diverged sharply. New York followed a middle path. As table 3 shows, New York?s share of population in the three state region was larger than its share of banks or bank capital in 1820 and 1830, a situation reversed in 1850 and 1860. New York was a very interesting case, since it was a state where bank charters were openly and explicitly used for political purposes. Like Pennsylvania and Massachusetts, New York had begun chartering banks in the 1790s, obtained bank stock on which it earned dividends, and gradually expanded the number of chartered banks in the early decades of the century. Beginning in 1814, under the leadership of Martin Van Buren and the ?Albany Regency,? the New York Republican party began systematically using the granting of bank charters for political purposes.

The first step was making the charters more attractive. ?Actually, the first step in the political management of the banking business had been taken in 1814 when the state stopped subscribing to shares in newly chartered banks or requiring the promoters of new banks to give a bonus to the state for their charters.?[35] The Republicans successfully opposed attempts to impose a tax on bank capital in 1815, 1818, and 1819. In 1821, they succeeded in placing a clause in the new constitution requiring two-thirds of the votes in the legislature to create a new bank charter. By granting charters only to bankers who were Republican and willing to actively support the party, Van Buren and the Regency were able to consolidate their hold on the party and on the state government. Limiting charters increased their economic value and, in so doing, increased their utility as political favors to be distributed by the Republicans.

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[34] Dodd, 211.

[35] Seavoy, 91. The discussion of New York is based on Seavoy, 81-148.

The excesses of the Regency produced a reaction. In 1838, while the Republicans were out of the majority, a ?Free Banking? law was passed. The law was a general incorporation act for banks and the number of banks incorporated increased. The state already had a tax on capitalization in place, although there had been difficulties it applying it to corporations as diverse as railroads and banks. Ultimately, the tax became similar to the bank capital tax in Massachusetts, and it was imposed on free banks after 1841. By the 1840s, then, New York had acquired the same fiscal interest in promoting the number of banks and their capital as Massachusetts, and the number of banks and their capital increased accordingly.

Rockoff?s study of free banking in the 1840s provides additional evidence on the rates of return to banks in New York, Philadelphia, and Boston, shown in Table 5. Entry limitations in Pennsylvania restricted the number of banks and raised profit margins. Free entry (subject to the conditions of the Free Banking Act in New York and the general regulatory act in Massachusetts) produced more competition and lower bank profits in Boston and New York. Capital was certainly mobile enough to take advantage of these differences, but government regulation prevented that mobility.

Fiscal interest clearly mattered in the development of American banking. Although the number of banks and dollars of bank capital are not perfect measures of banking services available to the public, they are systematic measures of the degree of financial development. American states had the capacity to pursue market augmenting policies by stimulating and allowing financial development to take place. States like Massachusetts found it in their fiscal interest to promote banks, and those states ended up with relatively large banking sectors. While a fiscal interest approach can help explain the differences between Massachusetts and Pennsylvania once the

state?s fiscal interest is understood, the theory is no help in explaining why the two states acquired different fiscal interests in the first place. There was little to distinguish the two states in regard to banking in 1811, and one would be hard pressed to predict the development of Massachusetts banking until after the capital tax had been passed. Can the fiscal interest model explain the transition to free banking and general incorporation?

V. The Case for General Incorporation and Free Banking

New York?s adoption of free banking had little to do with fiscal interest. Massachusetts did not adopt a free banking act until the 1850s, although it effectively followed a free banking policy for fiscal reasons. Therein lies the rub, there is no clear evidence that states adopted free banking acts because of fiscal reasons. States with a fiscal interest in free entry didn?t need to adopt free banking laws.[36] States appear to have adopted general incorporations acts for reasons other than fiscal interest. To the extent that fiscal interest helps us understand the transition to general incorporation, it is in the negative. States with close ties to existing corporations, whose fiscal interests were threatened by general incorporation acts, moved to mandatory general acts with more reluctance. In order to demonstrate the forces at work this section will focus on the timing of constitutional restrictions prohibiting incorporation by special act.

There is a sweeping, general explanation of why general incorporation acts spread throughout the country after 1840. General incorporation was part of the anti-elitist rhetoric and policies of Jacksonian Democracy. Corporations were attacked as vehicles of special interests, special grants of privilege to a favored few, unavailable to the general population and therefore

[36] When Massachusetts finally adopted a formal free banking law in 1851, no new banks were created.

incompatible with democratic ideals.[37] General incorporation acts did not remove all of the potential evils of corporations, particularly not of banks, but they did eliminate the stain of special privilege. If corporate status was freely available to all citizens, it could not be the domain of a privileged few. No matter how ones views the utility or dangers of corporations, it was still possible to see and agree that the special charter system created special privileges. As Hurst points out, much of the anti-corporation sentiment had little or nothing to do with corporations or the merits of different types of corporate forms, it was much more concerned with individual equity and equality.[38] Only the most rabid opponents suggested elimination of corporations all together.

There is a great deal of merit to this explanation. The Revolutionary and Constitutional settlement had created a republican, not democratic form of government in the United States. Suffrage and office holding were not open to the general population of free white males in most states: wealth and property restrictions were the rule rather than the exception. The federal constitution left the question of who could vote and hold office completely up to the states, and the internal organization of state governments and polities was clearly beyond the bounds of federal authority. Representation in state legislatures was often grossly and deliberately disproportional. There was an ongoing debate over whether representation should be based on wealth or population.[39] To modern ears much of this debate rings false, since we are not accustomed to hearing ardent supporters of representative government and a strong voice for the people, arguing that only property holders should have the vote. Where we might fear that the poor would rise up and demanding the redistribution of all property, they feared that men without property would be

[37] For an extensive sampling of the anti-corporation literature in Massachusetts see Maier, (1993), 58-73.
[38] Hurst, 30-57.
[39] Donald Stabile**?**s book has a nice explanation of how the rule counting slaves as 3/5's of a person came about in the

unable to maintain their independence as voters and their votes, as a result, would be available to corrupt interests with money to spend.[40] The fear was less that the poor would vote their own interests, than that the poor would become the pawns of corrupt, well organized factions and parties.

Between 1800 and 1840 some of the most heated political debates were over the extension of the franchise, and by 1840 most states had moved to a system of universal free, white, male suffrage, with imperfect but much more equal representation, and open requirements for office holders. The mood of the times was very much celebrated the triumph of democratic, anti-elitist government and government policies, it was the fulfillment of the true spirit of 1776. The adoption of general incorporation acts is a piece of this ideological shift in government policy, crowned by the triumph of Jacksonian democracy. There are, however, a few problems with applying this classical interpretation to the economic policies of the Jacksonian era.

First, there is now a half-century old literature in political science and political history that traces its origins back to this very question: what was Jacksonian Democracy really about? In *The Concept of Jacksonian Democracy* Lee Benson questioned whether economic issues really divided the electorate (incidentally, Benson's book was also sponsored by the Committee on Research in Economic History). That is, in an age when so many questions facing the government were economic in nature, does the economic status of voters predict their voting patterns, were the leaders of the competing parties drawn from different socio-economic groups, and did Jacksonian policies champion the interest of particular strata of economic interests? The answer, in a word, is no.[41] The "new political historians" have gone systematically forward to find that Benson's

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constitutional compromise over the allocation of representation and taxation, would slaves be people, wealth, or both?

[40] See Green's history of constitutional reform in the South and Williamson.

[41] A neat and compact summary of Benson's findings is contained in Chapter XV, 329-338 "Jacksonian Democracy" Concept

results for New York are found throughout the early 19th century everywhere in the nation. Party affiliation, church affiliation, and ethnic origins are simply much more powerful predictors of voting patterns than per capita income, wage rate, or industry of employment.[42]

Second, remember Schwartz's description of Pennsylvania banking. The opponents of the proposed Bank of Philadelphia were not anti-bank zealots, they were the stockholders and managers of the existing Bank of Pennsylvania. Bray Hammond's exposition of Jackson's war against the Second Bank of the U.S. pits bankers in New York (pro-Jackson, anti-BUS) against bankers in Philadelphia (anti-Jackson, pro-BUS), not anti-bank agrarians against pro-bank urban, commercial elites.[43] Urban commercial elites were pro- or anti-BUS depending on whether their specific banking interests would be furthered or frustrated by extending the bank's charter. The *Charles River Bridge* case was not brought to the Supreme Court because of anti-monopoly sentiments, but because another company wanted a charter to build a bridge that would compete with the existing Charles River Bridge. The Age of Jacksonian was an ideological age, and political ideology and rhetoric were critically important facets of the political process that we seek to understand, but the interest groups that battled over corporate policy in the states were those who sought corporation status for themselves, and perhaps sought to deny it to their competitors, not groups that were basically pro- or anti- corporations in general.

There was a broad and deep suspicion of corporations in America because corporations 1) represented special privileges not available to everyone, 2) created potential concentrations of wealth and power that would distort the political system, 3) had adverse economic affects because of monopoly power or because corporations were less dynamic than individual enterprises. The

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or Fiction?"

[42] Perhaps the most influential of the new political historians is Silbey, who has written extensively on these questions. I have also found McCormack's essays to be enormously helpful.

first two points resonated with revolutionary ideals. But these concerns failed to generate a general anti-incorporation movement. People were typically against some corporations and in favor of others. Allow me to quote Maier on this point, pp. 73-4:

> Although anticharter arguments were frequently stated as if they applied to all corporations without exception, in practice opposition usually settled on some corporations only. Even the Pennsylvania legislators who campaigned against the BNA and the reincorporation of Philadelphia [the city] apparently raised no objections to the charters granted ?every day,? as one legislator put it in 1786, to ?half a dozen or 20 people for some purpose or another.? Similarly, in 1792 James Sullivan carefully distinguished the incorporation of a bank from that ?to build a bridge, or to cut a canal,? which he found unobjectionable. Banks were probably assailed more often than any other kind of corporation. But consider the position of a delegate to the Massachusetts constitutional convention of 1853 who launched a rhetorically powerful attack on corporations ?of a business character.? Among corporations ?for other purposes,? which were apparently exempted from his criticisms, he included railroads, insurance companies and banks!

Americans may have been fearful of corporations in the abstract, but in the concrete they wanted access to the corporate form to carry out their own initiatives and plans.

It is ironic, that out of this skeptical environment emerged a set of general incorporation laws that enabled virtually anyone with adequate means to acquire the benefits of corporate status. To sort this out we need to revisit Mancur Olson?s fundamental concern over the power of special groups to form redistributive coalitions, combined with the importance of corporations to the fiscal interests to state governments. This way of thinking about the adoption of free banking or general incorporation laws suggests that three general interests are involved in addition to the state?s fiscal interest. First is the interest of the existing corporations who wish to protect their privileges. Second are the interests the corporations that wish to be formed. Third, is the general social predilection against grants of special privilege.

The most obvious test is states with no existing corporations. New states have not yet created corporations, and in new states we expect the weight of public antagonism toward special

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[43] Hammond, 369-451.

privilege and the hopes of corporations as yet unformed to lead these states to adopt general incorporation laws. After 1840 states entered the Union at irregular intervals. Table 6 shows the dates at which states adopted constitutional restrictions requiring that all incorporations be under general laws. The table separates states into two groups: existing states who modified their constitutions to include the restriction, and new states who adopted the restriction in their first constitution. Every new state admitted to the Union after 1846 had a constitutional provision requiring incorporation by general law at the time it became as state.

The four states that did not have constitutional restrictions by 1930 were all in New England: Massachusetts, Rhode Island, Connecticut, and New Hampshire. We have talked at some length about Massachusetts. Three of the four states, New Hampshire was the exception, had tax on bank capital, a substantial fiscal interests in banks, and followed a free entry policy even when they did not have free banking laws. As late as 1860 bank revenues accounted for 45 percent of state revenues in Connecticut, 21 percent of state revenues in Massachusetts, and 46 percent of state revenue in Rhode Island. The other state that relied heavily on a bank capital tax and allowed free entry into banking, was Delaware, where 40 percent of state revenues came from banks in 1860. Delaware did not adopt a constitutional restriction until 1897.

At this point it is not possible to do a more thorough quantitative analysis of the timing of state adoption of general acts or constitutional restrictions, there is simply not enough information available. Two examples are offered instead. On is New Jersey, where a strong and privileged corporation established fiscal ties to the state government that protected its interests well into the 1870s. The other is New York, were revulsion against special privileges produced Free Banking and one of the first constitutional bans on incorporation by special act.

On February 4, 1830, the state of New Jersey granted charters to both the Delaware and Raritan Canal Company and the Camden and Amboy Railroad and Transportation Company to open canal and a railroad, respectively, across the state. The charters were far from liberal. The state had the option to purchase one-quarter of the capital of each company, and transit duties were to be levied on freight and passengers on both lines. The transit duties were straight revenue measures ? the object of which is to secure a revenue to the Treasury without embarking in any expenditure of capital...?[44] Once created, the state realized that it could make more money by selling privileges to the companies. The legislature passed an act in late 1830 making it lawful for the railroad to give the state 1,000 shares of fully paid stock in return for a guarantee that the state wold not charter another railroad to haul freight or passengers between New York and Philadelphia. The state could void the promise by returning the stock. After difficulties getting the canal started, largely because of fears that the railroad would be too competitive, the two companies merged together.

In 1832 the ? Joint Companies were able to secure passage of the infamous ? monopoly bill? under the terms of which the companies presented the state with an additional 1000 full-paid shares on which dividends were to be paid ? as if the state had subscribed for such stock and paid the several installments thereon.?? In return the Camden and Amboy received the following privilege:

> That it not shall not be lawful, at any time during the said rail road charter, to construct any other rail road or railroads in this state, without the consent of the said companies, which shall be intended or used for the transportation of passengers or merchandise between the cities of New York and Philadelphia, or to compete in business with the rail road authorized by the act to which this supplement is relative.[45]

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[44] This discussion of New Jersey is taken from Cadman. The quote is from the *Emporium and True American* newspaper, January 23, 1830, as quoted in Cadman, 54.
[45] Cadman, 55-6.

New Jersey would charter other railroads, but all of them fed into the Camden and Amboy.

The state was set financially. Table 7 shows dividends on railroad stock and transit duties as a share of ordinary state expenditures from 1834 to 1850, as calculated by Tuttle. In some years in the 1830s and 1840s the state was able to forgo collection of the property tax, in 1848 it was abolished altogether. Revenue was the key. In 1834 and 1835, a rival turnpike company petitioned the state for the right to build a competing railroad. The committee appointed to report on the petition turned it down ?to preserve inviolate, sacred, and unimpaired, the *faith*, the *integrity*, and the *revenues* of the state, by a strict adherence to the system of policy which has laid the foundation of our Internal Improvements, *the principle of protection as a means of revenue*.?[46] ?The faith, the integrity, and the revenues of the state? was an unbeatable combination. The monopoly companies were a classic redistributional coalition, and they were able to hold their position against all comers until their properties were leased to the Pennsylvania Central in 1871.[47]

Few corporations were as special as the Camden and Amboy, but hundreds, if not thousands of corporations received special privileges from the state government that created them, often in direct exchange for payment. There was no hiding these special favors, corporate charters were public documents. Occasionally there was public outcry, always there were questions about the propriety of charters, but underlying it all was the understanding of a *quid pro quo*, special privileges for revenues. General incorporation acts could blunt some of this criticism by making the corporate form available to all, solving one of the equity problems. Prohibiting special

[46] *Votes and Proceedings of the General Assembly*, 59, session, 2 sitting (1835), 223, as quoted by Cadman, italics in the original.

[47] ?The vilification heaped on New Jersey by the press and public of other states, the efforts of other New Jersey railroad groups to break the monopoly, the ardent campaign of the Whig press of the state, and persistent and spirited opposition from such prominent New Jersey residents as the economist Henry C. Carey were unavailing.? Cadman, 59.

corporation acts altogether solved the remaining equity problem, everybody received the same treatment, and further solved the problem of corrupt influence of corporations in the legislatures (at least in terms of charters). In states like New Jersey, however, abandoning special charters came at the expense of the state?s fiscal interest.

Adoption of a free banking or general incorporation act created a potential political benefit by serving groups without charters. In the conflict over free banking in New York, these interests were crucial. As explained, the Albany Regency had used the granting of bank charters to control the Republican party in New York (which would become a branch of the Democratic Republicans under Jackson). The policy not only angered Whigs, but left non-Republicans who wished to establish banks without access to charters. The situation in New York was complicated further by the presence of an anti-corporate, anti-bank splinter party: the Equal Rights Party, known as the Locofocos. ?Since the Locofocos preached anticorporation, anticharter doctrines and particularly opposed any banking system on paper currency, they inevitably broke with the Democratic [Republican] party built by Martin Van Buren.?[48] As long as the Albany Regency controlled the state, there was nothing the Whigs or the Locofocos could do to realize their goals.

The business depression of 1837 brought the Whigs into power, and in alliance with the Locofocos, they passed the Free Banking Law of 1838. The law established minimum capital requirements for banks at $100,000, laid down rules for the operation of banks, limited liability of bank shareholders, and established a states board of bank commissioners with broad supervisory powers and responsibilities. As Benson, p. 98, points out, ?it is ironic that American historiography has tended to credit the Locofocos and their Radical Democratic allies with its [the

[48] Benson, 95-6. There is a great deal of confusion in party names during this period. Seavoy refers to Van Buren?s party as the Republican party, Benson refers to it as the Democratic party, I will try to keep the two straight. For our purposes here, the two main parties were Whigs and Democratic/Republicans.

Free Banking Law] passage.? It is true that the Locofocos were anti-monopoly, and the free entry provisions of law addressed that. But the Locofocos were against any barriers to entry (the $100,000 minimum capitalization was inconsistent with that), they were adamantly against paper money and banks of issue (the Act authorized banks to issue paper money), and they thought that bankers should be fully liable for currency issues (the Act created explicit limited liability for shareholders). In short, the Free Banking Act met only one of the goals set out by the Locofocos, free entry. The Locofocos provided very effective political cover for the Whigs, but received little in return.

There were no fiscal interests at stake in New York, at least not in the Free Banking law. The state was already taxing corporations through the capitalization tax, not just banks. The Regency realized the economic benefits of limited charters in the form of political favors, not in higher charter fees as in Pennsylvania. Expansion of the number of banks and bank capital under the Act would bring in more revenue, but there is no evidence that this played a crucial role in passage of the Act.

The strong aversion to the granting of special privileges in the United States that grew out of the revolutionary experience and was sharpened by the ongoing struggle for universal suffrage in the early 19th century was a major force in the adoption of general incorporation acts. This aversion manifested itself it many ways, most of them rhetorical rather than substantive. The establishment of permanent national political parties in the 1830s was, in part, due to the Jacksonian?s ability to capitalize on these sentiments, even if the Democrat?s policies did not follow their own rhetoric.[49] Anti-corporation sentiments shared in the aversion to special

[49] Here is how Benson, 80-81, puts the point: ?After Jackson?s Bank veto message in 1832, and particularly after 1837, when Martin Van Buren awoke to the political possibility of Locofocoism… Democratic rhetoric was designed to sound something like class war. One Whig response to that rhetoric was to portray the Democrats as ?desperate and revolutionary enemies of Law

privilege, but actual opposition to incorporation tended to be specific to individual companies or limited classes of corporations, like banks. There was never a general ban on all corporations in any state. The feeling against special privilege was strong enough by the 1840s, to secure constitutional restrictions against special incorporation in every state that entered the Union after 1845. These were states without large existing corporate interests.

New Jersey, with its strong attachment to the special charter of the Camden and Amboy, adopted a general incorporation act in 1845. It was not until 1875, however, that New Jersey prohibited incorporation by special act altogether. At that point, the special relationship between the state and the railroad had ended (discussed below). As long as the railroad?s special charter provided the state with revenues, the state kept the option of special charters open. Likewise Pennsylvania, which continued to glean revenues from the creation and renewal of bank charters did not prohibit special acts until 1874.

The most effective opponents of special corporate privilege were other corporations, or more accurately in most cases, other groups who wanted to form corporations but were prevented from doing so by the vested power of existing interests. Once established, corporations acted like Olsonian redistributive coalitions. The fiscal interest of the state, in this case the payments that competing new corporations were willing to make to the state to obtain charters, determined whether entry would occur. Only in cases where states stumbled onto the option of taxing inputs or outputs, rather than selling corporate privileges, did state allow free entry. Indeed, those states encouraged free entry. In states where the early history of corporate state relations had created a fiscal tie between the interests of specific corporation and state revenues, special incorporation

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and Order? who would impose ?agrarian and destructive legislation? and bring about ?popular demoralization, ruin and revolution....? But class war rhetoric need not reflect reality. in fact, it has frequently been used to conceal rather than to reveal the socioeconomic status and political objectives of those who use it. Moreover, it cannot be automatically assumed that class

tended to last longer.

VII. Federal Preemption of Bank Chartering

With the notable exception of the First and Second Banks of the United States, the federal government had left corporate chartering and corporate revenues to the states. Except during the exigencies of war, the tariff proved to be equal to the revenue demands of the national government. The Civil War changed all that. The Union government sought funds through taxation, borrowing, and currency issues. In 1863, the national government tapped into the fiscal potential of the state banks by encouraging them to obtain new charters as national banks.

The incentive for state chartered banks to switch to national charters was a strong one. National banks had the authority to issue national banks notes, which were backed by federal government debt. The National Banking Act allowed national banks to purchase federal bonds, hypothecate (deposit) them with the Comptroller of the Currency, and issue up to 90 percent of the face value of the bonds in bank notes. In order to induce banks to switch their charters, the act sweetened the offer by imposing a tax on the note issues of non-national banks, originally at 3 percent of face value later raised to 10 percent. The 10 percent tax effectively put the state chartered banks out of business as note issuing banks. The new national banks could invest in Treasury bonds, pocket the interest, and issue notes equal to 90 percent of the value of their original investment. The market for federal debt was strengthened and the interest burden of financing the war substantially reduced. It was a case of pure fiscal interest driving a change in policy. ?Congress enacted the legislation primarily to increase the government?s borrowing power during the war by requiring all national banks to invest a portion of their capital in

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war rhetoric actually influenced political reality and changed the social structure of political leadership.?

government bonds...?[50]

Was this change good or bad for the economy? The creation of national banks certainly reduced competition in the banking industry, particularly through the establishment of minimum capital requirements which reduced entry. On the other hand, the creation of a network of larger banks of issue facilitated the further development of a national capital market, although one that was tilted toward larger banks in the major urban centers.

VIII. The Move to Liberal Incorporation Laws

While the move to general incorporation was spread out over time and states, the move to more liberal incorporation laws in the 1880s and 1890s was concentrated in two states, New Jersey and Delaware. Conflicts with the Camden and Amboy after it was leased to the Pennsylvania Railroad, produced declining revenues from transit duties and dividends in the early 1870s. The state adopted a constitutional restriction requiring general incorporation in 1875 and New Jersey gave up on a century of issuing special charters. The state quickly turned to other sources of corporate revenues. Unlike the early 19th century, when manufacturing firms were small relative to banks, by the 1880s manufacturing firms had grown large and were beginning to raise capital through equity sale in stock markets.[51] General incorporation acts for manufacturing firms, with their limits on capitalization, prescriptions on internal company structure, and prohibitions and impediments to interstate operations had become too restrictive for the new national corporations, like Standard Oil.

New Jersey was the first state to capture the potential fiscal benefits of liberal chartering policies. Through a series of acts, the state steadily liberalized its general incorporation acts to

[50] Sylla, (1969), 659.

allow companies greater latitude in raising capital, choosing lines of business, operating across state lines, and internal governance. In 1896 all of these changes were collected in the general corporation law revision. After 1896, franchise taxes and charter fees accounted for at least 40 percent of state revenues until 1915.[52] There was a wave of business consolidations in manufacturing after 1895. As Nelson shows, over 79 per cent of the capital involved in consolidations between 1895 and 1904 was merged into corporations domiciled in New Jersey.[53] New Jersey attracted corporations to its borders not by encouraging to locate there physically, but by enabling them to establish a corporate headquarters in their state that could direct the operations of a company (or holding company) spread throughout the nation.

In 1913, New Jersey abandoned its liberal policies and adopted a relatively strict set of anti-trust laws. The new laws dramatically reduced the revenues from franchise taxes and charter fees after 1914. The state reversed its position after World War I, but by that time Delaware had stepped in to take New Jersey?s place. Delaware attracted corporations by adopting much the same general incorporation laws as New Jersey. By maintaining its laws over time (unlike New Jersey) Delaware remained the leading domicile state for large corporations well into the twentieth century. In 1956 over a third of the nations 600 largest non-financial corporations were located in Delaware.[54]

There is no need here to go beyond Hurst?s conclusion that the liberalization of general corporation laws in New Jersey and Delaware was motivated by anything more than ?their own greed for revenue.?[55] What separated the 1880s from the 1830s, was New Jersey?s decision, in

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[51] Manufacturing firm had always used incorporation, but stock was not widely traded in impersonal markets until the 1880s.
[52] See Grandy, 682. The discussion of New Jersey is based on Grandy, Nelson, Lamoreaux, and Dodd (1934).
[53] Nelson, Table 37, 76 and the discussion on 64-70.
[54] Hurst, 150.
[55] The quote is from Hurst, page 12, the bulk of the discussion is on 147-152.

the Holding Company Act of 1888, to allow its corporations to hold the stock of corporations located in other states. Until that change, out of state corporations were ?foreign? and states could discriminate against foreign corporations on a number of dimensions. After the New Jersey changes, it became extremely difficult for a state to protect its corporations against ?foreign? competition. What followed, almost immediately, was the development of large, modern, national and multi-national firms in manufacturing, with easy access to capital through growing equity markets.

VIII. Conclusions

I have assumed that development of the banking system was a central element in the development of American financial markets and accepted Sylla?s contention that the American financial system was, in historical or comparative terms, well developed by the 1830s. Government played a critical role in the developing these markets. All but two of the chartered banks operating in the American economy between 1790 and 1860 were creations of state governments. The number of banks grew rapidly, as did the size of their capital. Millions of dollars was mobilized to finance short term trade credits, commercial development, and longer term investments in land and manufacturing. And banking was only the entering wedge. State governments incorporated thousands of manufacturing firms and, by the end of the century, those firms were on the leading edge of technological change and economic development. New forms of multi-state and then multi-national business were, again, promoted by state incorporation policies. This was a clear case of market-augmenting government.

Why did the government do it? Fiscal interest goes a long way to explaining the pattern of government policies across states. Most states acquired some fiscal interest in corporations, and

the form that their interest took was critically important. States that owned corporations outright strictly limited entry, sometimes establishing state monopolies. States that established entry fees in the form of bonuses for corporate charters, tended to limit entry in order to increase the value of charters. States that taxed inputs or outputs, tended to allow free entry. In each case, the behavior of the state was consistent with its fiscal interest, taking the existence of its fiscal structure as given. The national government?s preemption of bank chartering in 1863 was clearly motivated by fiscal interests. The adoption of liberal general incorporation acts in New Jersey and Delaware was driven completely by fiscal considerations.

The theory is less successful at predicting which type of taxation will emerge. Fiscal structures and corporate policies are endogenous. We can identify conditions in individual states that conditioned their development. North would call this path dependence, Olson would call these explanations *ah hoc*. Systematically accounting for these factors that determine revenue structures is beyond our reach at present. It seems fairly clear from the discussion of bank chartering, however, that encompassing interest is not a concept that will take us very far. All American states had roughly the same encompassing interests in economic development.

North argues that we need a model of ideology, or of mental models, in order to understand how institutions evolve over time. I agree, and have tried to demonstrate how commonly held beliefs about the legitimacy of incorporation affected government policy. The student of early American is blessed by a rich history of what people thought and believed, and I have tried to draw on that literature here. At the same time, it is difficult to associate changes in ideology with changes in policy. The move to general incorporation acts cannot be explained by fiscal interest. At best, the over riding concern that government not create special privileges, demonstrated in

practice by the growing number of state with universal suffrage, created an intellectual and political environment in which special incorporation acts were continuously challenged. Why that social predilection became so concretely embedded in general incorporation acts and constitutional prohibitions on special charters after 1840 is not so clear. States with strong fiscal ties to existing specially chartered corporations may have moved more slowly to prohibit special charters, but there was no obvious fiscal interest served by general incorporation acts.

The American?s solution to the problem was neither to eliminate corporations nor to prevent special interests from operating. As I have tried to show, an important and positive part of the revolutionary legacy in the United States was the positive benefits placed upon free association. The determination that government should promote association and organization, not just fail to suppress it, was probably uniquely American in the early 19th century. This ?ideological? view was just as prevalent as the predilection against special privilege. Positive public support for associations of all types, combined with the fiscal benefits of promoting incorporation, provided Americans with a world class financial system by the 1830s, and the world?s leading manufacturing economy by 1900. It was truly a case of market-augmenting government.

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Table 1
Average Incorporations per year
Decade Averages

Decade	New York	Ohio	Maryland	Pennsylvania	New Jersey	Maine
1800-1809	17.9	0.875	2	5.6	4.2	
1810-1819	42.6	5	9.6	21.9	6.5	
1820-1829	35.4	4.3	7.3	13.1	6.9	13.2
1830-1839	57.3	43	17.8	37.9	18.2	43.3

Source: Evans, George Heberton. 1948. B*usiness Incorporations in the United States*.

Table 2

	Outcome		
Fiscal interest	Free Entry	Limited Entry	No Entry
Tax inputs	X		
Entry Fees		X	
Monopoly			X

Table 3 Shares of National and Regional Population, Banks, and Bank Capita

	National			Regional		
State	Population	Banks	Capital	Population	Banks	Capital
1820						
MA	5.4	9.1	10.3	17.8	28.9	23.8
NY	14.2	10.7	18.6	46.6	34	43
PA	10.9	11.7	14.4	35.6	37.1	33.2
1830						
MA	4.7	20	18.5	15.7	48.5	37.1
NY	14.9	11.2	18.2	49.5	37.2	36.4
PA	10.4	10	13.3	34.8	24.3	26.5
1850						
MA	4.3	14.3	16.2	15.5	33.7	35.2
NY	13.4	22.5	21.3	48.4	53	46.3
PA	10	5.7	8.5	36.1	13.3	18.6
1860						
MA	3.9	11	15.3	15.4	31.2	32.1
NY	12.3	19.2	27.1	48.4	54.3	55.4
PA	9.2	5.1	6	36.2	14.5	12.5

Sources: Population taken from U.S. Bureau of the Census, 1975.
Banks and bank capital for 1820 and 1830 from Gilbart 1967, 43-48.
Banks and bank capital for 1850 and 1860 from Sylla 1975, 249-52.

Table 4

Bank Revenues as Share of Total Net Revenues (decade averages)

State	1800	1810	1820	1830	1840	1850	1860
CT	0.00	0.09	0.09	0.27	0.37	0.34	0.45
DE	0.01	0.12	0.44	0.43	0.56	0.52	0.4
MA				0.61	0.45	0.34	0.21
ME	0.00	0.00	0.00	0.00	0.00	0.00	0
NH	0.00	0.00	0.00	0.03	0.01	0.00	0
NJ					0.00	0.00	0.03
NY	0.04	0.06	0.06	0.01	0.01	0.01	0.01
PA	0.42	0.38	0.53	0.23	0.09	0.04	0.06
RI	0.00	0.02	0.02	0.24	0.41	0.46	0.46
VT	0.00	0.00	0.03	0.08	0.10	0.04	0.02
Average	0.06	0.08	0.15	0.21	0.20	0.17	0.16
MD		0.29	0.05	0.09	0.18	0.04	0.03
NC			0.31	0.34	0.44	0.01	0
SC	0.05	0.09	0.13	0.01	0.05	0	0
VA	0.00	0.12	0.02	0.00	0.09	0.13	0.1
Average	0.02	0.16	0.13	0.11	0.19	0.04	0.03
IL				0.03	0.04	0	0
IN				0.03	0.04	0.07	0
MI					0.03	0.01	0.01
MN		0	0				0
OH		0	0	0.01	0.04	0.01	0.02
Average				0.02	0.04	0.02	0.01
AK					0.06	0	0.01
MO						0.13	0.06
MS			0	0.04	0.02	0	0
TN					0	0	0.14
Average			0	0.04	0.03	0	0.04

Notes: Blank cells in the table are decades without data. The decades run from the year ending in five to the year ending in four, that is, “1830” is 1825 to 1834. The "Average” row is the simple average of states in each region.

Source: Wallis, Sylla, and Legler, 1994. “The Interaction of Taxation and Regulation in Nineteenth Century Banking,” in Goldin and Libecap, *The Regulated Economy.*

Table 5

Dividends as a percentage of Par Value of Bank Capital

	New York	Boston	Philadelphia
1849	8.79	8.06	9.79
1850	8.70	8.36	10.60
1851	9.38	7.82	10.30
1852	9.03	7.78	10.27
1853	8.85	8.08	11.13
1854	8.87	8.65	11.40
1855	9.08	7.98	11.00
1856	8.61	7.81	10.26
1857	7.73	7.73	7.12
1858	6.91	7.43	8.03
1859	7.56	7.31	8.03

Source: Hugh Rockoff, “The Free Banking Era," Table 3, p 157.

Table 6

Dates of Constitutional Provisions Necessitating Incorporation
Under General Laws

Existing States		New States	
State	Year	State	Year
Louisiana	1845	Iowa	1846
New York	1846	Wisconsin	1848
Illinois	1848	California	1849
Michigan	1850	Minnesota	1858
Maryland	1851	Oregon	1859
Ohio	1851	Kansas	1861
Indiana	1851	West Virginia	1863
Missouri	1865	Nevada	1864
Alabama	1867	Nebraska	1867
North Carolina	1868	Colorado	1876
Arkansas	1868	North Dakota	1889
- Tennessee	1870	South Dakota	1839
—Pennsylvania	1874	Montana	1889
New Jersey	1875	Washington	1889
Maine	1875	Idaho	1890
Texas	1876	Wyoming	1890
Georgia	1877	Utah	1896
Mississippi	1890	Oklahoma	1907
Kentucky	1891	New Mexico	1912
South Carolina	1895	Arizona	1912
Delaware	1897		
Florida	1900		
Virg:nia	1902		
Vermont	1913		

As of 1940, only four states did not have constitutional restrictions:
Massachusetts, Connecticut, New Hampsnire, and Rhode Island.
Source: Evans, p. 11, Table 5.

Table 7

Dividends from Railroad Stock and Transit Duties
As a percentage of Ordinary State Expenditures

Year	Percentage of Expenditures
1834	51
1835	95
1836	69
1837	58
1838	46
1839	61
1840	79
1841	65
1842	54
1843	74
1844	62
1845	62
1846	67
1847	64
1848	105
1849	93

Source: P.M. Tuttle, “History of Railroad Taxation in New Jersey,” 1920, Harvard University Doctoral Thesis, as cited in Cadman, p. 401.